

REMARKS

In the Final Office Action, Claims 1-36 were examined and stand rejected. In response to the Final Office Action, Claims 1-3, 6-8, 12-17, 19-22, 24-29 and 34-36 are amended, no claims are added and no claims are cancelled. Applicant respectfully requests reconsideration of pending Claims 1-36 in view of the following remarks.

I. Claims Rejected Under 35 U.S.C. §102

The Examiner has rejected Claims 1, 6, 7, 11, 15, 19, 20, 25, 28, 29, 33 and 34-36 under 35 U.S.C. §102(e) as being clearly anticipated by U.S. Patent No. 6,298,482 issued to Seidman et al. (“Seidman”). Applicant respectfully traverse this rejection.

Regarding Claims 1, 15 and 25, Claims 1, 15 and 25 recite analogous claim features. Claim 1 is representative. Claim 1 recites the following claim features which are neither disclosed or suggested by Seidman:

broadcasting meta-data to one or more client systems, including descriptions of a plurality of available for broadcast data files from a service provider system and a plurality of upcoming data files to be broadcast to the one or more client system by a broadcast service system;

rating the plurality of available for broadcast data files and plurality of data files; and

broadcasting, by the service provider system according to the ratings, at least one available for broadcast data file for selective storage within the one or more client systems according to respective content rating tables of the one or more client systems and prior to broadcast of at least one of the plurality of upcoming data files by the broadcast service system. (Emphasis added.)

As recited by amended Claims 1, 15 and 25, meta-data regarding available for broadcast data files from a service provider system and upcoming data files to be broadcast to one or more client system by a broadcast service system is combined. As further recited by amended Claims 1, 15 and 25, rating of the combined data files enables a service provider system to broadcast at least one available for broadcast data file for selective storage within one or more client’s systems and prior to broadcast of at least one of the plurality upcoming data files by the broadcast service system. Conversely, Seidman discloses a system for two-way digital multi-media broadcast and interactive services; specifically, as recited by Seidman:

The present invention enables the provision, to the user, of the capability to navigate through a large number of video (and other multi-media) resources in a unique fashion. The user can move within and between video sources without exiting the viewing of the video display. By selecting video objects (see above) within the current video, the viewer is given the ability to move to one or more alternative video sources. From that video, the same capability can move the user to another video source and so on. (col. 5, lines 24-32.) (Emphasis added.)

As further described by Seidman:

The digital stream which is transmitted on the downstream path is a multiplex of streams of various media, such as video and audio, and may contain multiple streams of each media type. (col. 4, lines 40-43.) (Emphasis added.)

As defined by Seidman:

A multiplex is a set of media streams which are coordinated for concurrent play, such as a video media stream and an audio media stream. (col. 5, lines 3-5.) (Emphasis added.)

Based on the cited passages above, Applicant respectfully submits that the disclosure of Seidman is limited to a single content provider that transmits a digital stream to a user which is a multiplex of streams that are coordinated for concurrent play (*See*, col. 5, lines 3-5) and the use of a set top box to enable the user to navigate through the concurrently transmitted video and audio streams of the multiplex received from the single content provider (*See*, col. 5, lines 24-32). As further described by Seidman, the digital stream may be customized according to selection history records generated from monitoring viewing of the user (see col. 6, lines 2-6 and col. 7, lines 5-19).

Applicant respectfully submits that the content provider in the viewer response system, as taught by Seidman, is a single content provider having various video and audio streams, which may be concurrently provided as a multiplex for navigation thereof by a user. (*See*, col. 5, lines 3-5.) Furthermore, Seidman teaches the coordinated transmission of a multiplex of audio and video streams for concurrent play of the audio and video streams to enable a user to navigate the concurrently transmitted audio and video streams to select a combination thereof and receive a customized digital stream. (*See, supra.*)

Conversely, amended Claims 1, 15 and 25 seek to determine at least one available for broadcast data file from a service provider system to broadcast to one or more client systems for selective storage within the one or more client systems prior to the broadcast of at least one of a plurality of upcoming data files by a broadcast service system. In other words, as recited by amended Claims 1, 15 and 25, a service provider system may contain a plurality of data files, which are available for broadcast (available for broadcast data files). However, unless explicitly decided by the service provider system, such available for broadcast data files may not be broadcast. As recited by amended Claims 1, 15 and 25, the plurality of upcoming data files to be broadcast by a broadcast service system will each eventually be broadcast to one or more client systems, since such upcoming data files have been scheduled for broadcast by the broadcast service system.

As mandated by case law, “Anticipation requires the presence in a single prior art reference disclosure of each and every element of the claimed invention, *arranged as in the claim.*” Lindemann Maschinenfabrik v. American Hoist & Derrick (“Lindemann”), 730 F.2d 452, 1458 (Fed. Cir. 1994)(emphasis added). Additionally, each and every element of the claim must be exactly disclosed in the anticipatory reference. Titanium Metals Corp. of American v. Banner (“Banner Titanium”), 778 F.2d 775, 777 (Fed. Cir. 1985).

Here, Seidman explicitly discloses that a digital stream transmitted to a user is a multiplex of streams that are coordinated for concurrent play. (See, col. 5, lines 3-5.) Conversely, as recited by amended Claims 1, 15 and 25, a service provider system broadcasts at least one available for broadcast data file for selective storage within one or more client systems prior to the broadcast of at least one of the plurality of upcoming data files by the broadcast service system.

Consequently, Applicant respectfully submits that the transmission of the available for broadcast data file prior to broadcast of at least one of the plurality of upcoming data files, as recited by amended Claims 1, 15 and 25, is not disclosed nor suggested by multiplex of media streams, as taught by Seidman. (See, col. 5, lines 3-5.) Seidman explicitly requires the coordinated transmission of media to a user to enable concurrent play of the media. (col. 5, lines 3-5.) Consequently, the disclosure in Seidman would require the concurrent transmission of the available for broadcast data and the upcoming data, in contrast to the recited features of Claims 1, 15 and 25.

Accordingly, Applicant respectfully submits that the Examiner is prohibited from relying on Seidman as an anticipatory reference, since Seidman fails to disclose combined meta-data to enable the broadcast of at least one available for broadcast data file for selective storage within one or more client systems and prior to broadcast of at least one upcoming data files by the broadcast service system, as recited by amended Claims 1, 15 and 25. Banner Titanium, *supra*.

Hence, Applicant respectfully submits that the Examiner fails to establish a *prima facie* case of anticipation, since the Examiner fails to illustrate the presence in the prior art reference disclosure of Seidman regarding each and every element, as recited by amended Claims 1, 15 and 25 and as arranged in amended Claims 1, 15 and 25. Lindemann, *supra*.

Consequently, Applicant respectfully submits that Claims 1, 15 and 25 are patentable over Seidman, as well as the references of record. Consequently, Applicant respectfully requests that the Examiner reconsider and withdraw the §102(e) rejection of Claims 1, 15 and 25.

Regarding Claims 6, 19 and 28, Claims 6, 19 and 28, recite analogous claim features. Claim 6 is representative. Claims 6, 19 and 28 recite the following claim feature which is neither disclosed nor suggested by Seidman:

receiving at least one of an upcoming data file broadcast by the service provider system and an available for broadcast data file broadcast by the broadcast service system; and
storing, based on the content rating table, one of the received available for broadcast data file broadcast by the broadcast service system and the received upcoming file broadcast by the service provider system. (Emphasis added.)

As recited by Claims 6, 19 and 28, the data files stored are a combination of data files available for broadcast from a service provider system and the plurality of upcoming data files that are to be broadcast by a broadcast service system. For at least the reasons indicated above regarding the rejection of Claims 1, 15 and 25, the program segments provided to users, as taught

by Seidman, are from a single service provider or a single broadcast service system for concurrent playback, and not from a combination thereof as recited by Claims 6, 19 and 28.

As recited by amended Claims 6, 19 and 28, either a received available for broadcast data file, broadcast by the broadcast service system, is stored or a received upcoming data file, broadcast by the service provider system is stored. Hence, as recited by Claims 6, 19 and 28, a client system is given the capability to immediately store an upcoming data file based on the broadcast by the service provider system and not have to wait for eventual broadcast of the upcoming data file by the broadcast service system.

As further recited by Claims 6, 19 and 28, the user is also provided with the capability of waiting for the broadcast service system to broadcast a data file that is both available for broadcast from the service provider system and also an upcoming data file that is to be broadcast by the broadcast service system. Consequently, Applicant respectfully submits that Seidman fails to disclose, teach or even suggest the combination of possible storage of content from a service provider system that is also to be broadcast by a broadcast service system, or the ability to delay the storage of a data file that, although available for broadcast from the broadcast service system, is also an upcoming data file to be broadcast by a broadcast service system, as taught by Claims 6, 19 and 28 .

Hence, Applicant respectfully submits that the Examiner is prohibited from relying on Seidman as an anticipatory reference, since Seidman fails to exactly disclose each and every element, as recited by amended Claims 6, 19 and 28. Banner Titanium, supra. Therefore, Applicant respectfully submits that the Examiner fails to establish a *prima facie* case of anticipation, since the prior art reference disclosure of Seidman fails to disclose each and every element, as recited by Claims 6, 19 and 28, as arranged in such claims. Lindemann, supra.

Accordingly, amended Claims 6, 19 and 28 are patentable over Seidman as well as references of record. Consequently, Applicant respectfully requests the Examiner reconsider and withdraw the § 102(e) rejection of Claims 6, 19 and 28.

Regarding Claims 7 and 11, based on there dependency from Claim 6, are also patentable over Seidman as well as the references of record. Consequently, Applicant respectfully request that the Examiner reconsider and withdraw the § 102(e) rejection of Claims 7 and 11.

Regarding Claim 20, Claim 20 based on its dependency from Claim 19, is also patentable over Seidman as well as the references of record. Consequently, Applicant respectfully requests that the Examiner reconsider and withdraw the § 102(e) rejection of Claim 20.

Regarding Claims 29 and 33, based on the dependency from Claim 28, are also patentable over Seidman as well as the references of record. Consequently, Applicant respectfully requests that the Examiner reconsider and withdraw the § 102(e) rejection of Claims 29 and 33.

Regarding Claim 34, Claim 34 recites the following claim features which are neither disclosed nor suggested by Seidman:

wherein the service provider server selects at least one upcoming data file of the plurality of the upcoming data files according to the ratings received from the one or more client systems, and

wherein the service provider broadcast server further broadcasts the selected upcoming data file for selective storage within the one or more client system according to respective content rating tables of the one or more client systems. (Emphasis added.)

For at least the reasons indicated above, Seidman is devoid of any disclosure regarding the broadcast, by a service provider system, of an upcoming data file prior to broadcast of the upcoming data file by a broadcast service system and for selective storage within one of our client systems as recited by Claim 34. As recited by Claim 34, a service provider broadcast server includes the capability to immediately broadcast an upcoming data file and not have to wait for eventual broadcast of the upcoming data file by the broadcast service system. Conversely, Seidman teaches that the transmitted program segments are part of the multiplexed digital stream from a single service provider that is coordinated for concurrent play to enable a user to select segments to form a customized segment stream. (See, col. 5, lines 24-32.)

Accordingly, the Examiner is prohibited from using Seidman as an anticipatory reference to anticipate amended Claim 34 since Seidman fails to exactly disclose each and every element recited by amended Claim 34. Banner Titanium, supra. Hence, Applicant respectfully submits that the Examiner fails to establish a *prima facie* case of anticipation since the case law clearly establishes that each and every element of the claimed subject matter must be exactly disclosed by an anticipatory reference to establish a *prima facie* case of anticipation. Lindemann, supra.

Therefore, amended Claim 34 is patentable over Seidman as well as the references of record. Consequently, Applicant respectfully requests that the Examiner reconsider and withdraw the § 102(e) rejection of Claim 34.

Regarding Claims 35 and 36 are based on their dependency from 34 are also patentable over Seidman as well as the references of record. Consequently, Applicant respectfully requests that the Examiner reconsider and withdraw the § 102(e) rejection of Claims 35 and 36.

II. Claims Rejected Under 35 U.S.C. §103

The Examiner has rejected Claims 2-4, 8, 12, 14, 16-18, 21-24 and 26 under 35 U.S.C. §103(a) as being unpatentable over Seidman in view of U.S. Patent No. 6,601,237 issued to Ten Kate et al. ("Ten Kate"). Applicant respectfully traverses this rejection.

Regarding the Examiner's citing of Ten Kate. Ten Kate teaches:

Virtual channel means for creating a user selectable virtual channel for reproducing the programs of said subset, the apparatus being adapted to control the tuner to tune to a channel currently broadcasting a program of said subset. (See col.

1, lines 44-47) As further described by Ten Kate, the virtual channel is created by merely manipulating the information tables describing the digital broadcast stream. Other components need not be adapted, since they perceive the additional virtual channel as a genuine channel . . . since the virtual channel comprises program pointers which are duplicated from the original channels. (col. 2, lines 1-11.) (Emphasis added.)

Based on the cited passages above, Applicant respectfully submits that the virtual channel as taught by Ten Kate is generated from a plurality of programs received in a digital broadcast stream, or a broadcast service system as recited by the claimed invention. Hence, Applicant respectfully submits that the teachings of Ten Kate are expressly limited to:

Automatically tuning to the genuine channels broadcasting the programs compiled in the virtual channel . . . since the virtual channel comprises program pointers which are duplicated from the original channels. (col. 1, line 51 to col. 2, line 11.) (Emphasis added.)

Accordingly, Applicant respectfully submits that the combination of Seidman in view of Ten Kate fails to teach or suggest the broadcasting of at least one available for broadcast data files for selective storage within one or more client systems according to respective content rate tables of the one or more client systems and prior to broadcast of at least one of the plurality of upcoming data files by the broadcast service system, as recited by amended Claims 1, 15 and 25. In contrast, the teachings of Seidman are limited to coordinated transmission of various audio and video streams for concurrent play to enable user navigation to the concurrently transmitted audio and video streams to select from the various audio and video streams to create a customized content stream for a user. (See, col. 4, lines 40-43 and col. 5, lines 3-5 and 24-32.)

Hence, for at least the reasons indicated above, Seidman fails to disclose the transmission of the available for broadcast data file for selective storage within one or more client prior to the broadcast of at least one of a plurality of upcoming data files by a broadcast service system, as recited by amended Claims 1, 15 and 25.

Consequently, Applicant respectfully submits that the combination of Seidman in view of Ten Kate fails to teach or suggest each of the recited features of amended Claims 1, 15 and 25, as required to establish a *prima facie* case of obviousness. Therefore, Applicant respectfully submits that the Examiner is prohibited from establishing a *prima facie* case of obviousness of amended Claims 1, 15 and 25, since the combination fails to teach or suggest each of the recited features of amended Claims 1, 15 and 25. In re Royka, 490 F.2d 981, 180 USPQ 580 (CCPA 1974).

Accordingly, Applicant respectfully submits that amended Claims 1, 15 and 25 are patentable over the combination of Seidman in view of Ten Kate. Therefore, Claims 2-4 based on their dependency from Claim 1, also patentable over the combination of Seidman in view of Ten Kate. Consequently, Applicant respectfully requests that the Examiner reconsider and withdraw the § 103(a) of Claims 2-4.

Regarding Claim 8, Claim 8 depends from Claim 6. Amended Claims 6 and 9 recite the storage of one of an available for broadcast data file broadcast by a broadcast service system and an upcoming data file broadcast by a service provider system the storage of data file based on a content rating table.

As indicated above, Seidman fails to teach these recited features of amended Claim 6. Furthermore, Ten Kate is devoid of any such teachings regarding the storage of one of an available for broadcast data file broadcast by a broadcast service system and an upcoming data file broadcast by a service provider system the storage of data file based on a content rating table, as recited by amended Claim 6. Specifically, the only reference to program storage in Ten Kate indicates that:

An alternative embodiment is characterized in that the scheduling means are further adapted to record the second program, and reschedule it for the virtual channel to fill a gap before or after the program scheduled for the virtual channel. (col. 2, lines 37-40,)

Hence, Applicant respectfully submits that the teachings of Ten Kate and Seidman, whether viewed in combination or independently, fail to teach or suggest the storing of one of an available for broadcast data file broadcast by a broadcast service system and an upcoming data file broadcast by a service provider system, as recited by amended Claims 6 and 19.

Accordingly, amended Claims 6 and 19 are therefore also patentable over the combination of Seidman in view of Ten Kate.

Hence, Claim 8, based on its dependency from Claim 6, is also patentable over the combination of Seidman in view of Ten Kate. Consequently, Applicant respectfully requests that the Examiner reconsider and withdraw the § 103 rejection of Claim 8.

Regarding Claims 12 and 22, Claims 12 and 22 recite the following claim features, which are neither taught nor suggested by either the combination of Seidman in view of Ten Kate or the references of record:

selectively receiving, based on the content rating table, a subset of the plurality of upcoming data files broadcast by the service provider system; storing the subset of the plurality of available for broadcast data files broadcast by the service provider system; and when a data file from the subset of the plurality of upcoming data files is broadcast based on the broadcast schedule, storing the upcoming data file based on the content rating table. (Emphasis added.)

For at least the reasons indicated above, the disclosure in Seidman is limited to the transmission of a digital stream on a downstream path, which is a multiplex of various media that is coordinated for concurrent play. (See, col. 4, lines 40-43 and col. 5, lines 3-5.) Applicant respectfully submits that the above-recited features of Claims 1, 12 and 22 of having to wait for a data file from the plurality of upcoming data files broadcast by the broadcast service system clearly indicates that the upcoming data files broadcast by the service provider system and the subset of the

plurality of available for broadcast data files broadcast by the service provider system are not provided for concurrent play by a user.

Applicant respectfully submits that Seidman explicitly requires the transmission of a digital stream to a user must be coordinated for concurrent play; and hence, therefore, cannot teach or suggest the subsequent receipt of upcoming data files broadcast by a broadcast service system for storage within one or more client systems based on the content rating table, as recited by amended Claims 12 and 22. Accordingly, Applicant respectfully submits that the Examiner's citing of Ten Kate fails to rectify the deficiencies of Seidman in failing to teach or suggest each of the above-recited features of amended Claims 12 and 22, as required to establish a *prima facie* case of obviousness. In re Royka, supra.

Accordingly, Applicant respectfully submits that the Examiner is prohibited from establishing a *prima facie* case of obvious of Claims 12 and 22, since the combination of Seidman in view of Ten Kate fails to teach or suggest each of the recited features of amended Claims 12 and 22. Id.

Accordingly, Applicant respectfully submits that amended Claims 12 and 22 are patentable over the combination of Seidman in view of Ten Kate as well as the references of record. Consequently, Applicant respectfully requests that the Examiner reconsider and withdraw the § 103 rejection of Claims 12 and 22.

Regarding Claim 14, Claim 14, based on its dependency from Claim 12, is also patentable over the combination of Seidman in view of Ten Kate. Accordingly, Applicant respectfully requests that the Examiner reconsider and withdraw the § 103 rejection of Claim 14.

Regarding Claims 16-18, Claims 16-18, based on their dependency on Claim 15, are also patentable over the combination of Seidman in view of Ten Kate for at least the reasons described above regarding Claims 2-4. Consequently, Applicant respectfully requests that the Examiner reconsider and withdraw the § 103 rejection of Claims 16-18.

Regarding Claim 21, based on its dependency from Claim 19, for at least the reasons described above, is also patentable over the combination of Seidman in view of Ten Kate. Consequently, Applicant respectfully requests the Examiner reconsider and withdraw the § 103 rejection of Claim 21.

Regarding Claims 23, 24 and 26, Claims 23, 24 and 26, based on their dependency from Claim 22 and for at least the reasons described above, are also patentable over the combination of Seidman in view of Ten Kate. Consequently, Applicant respectfully requests that the Examiner reconsider and withdraw the §103 rejection of Claims 223, 24 and 26.

The Examiner has rejected Claims 5, 10, 31 and 32 under 35 U.S.C. §103(a) as being unpatentable over Seidman and further in view of Ten Kate and U.S. Patent Application No. 2002/0112235 to Ballou, Jr. et al. ("Ballou"). Applicant respectfully traverses this rejection.

Regarding the Examiner's citing of Ballou, Applicant respectfully submits that the Examiner's citing of Ballou fails to rectify the deficiencies of the combination of Seidman in view of Ten Kate to teach or suggest the combination of data files available from a service provider system and data files to be broadcast by a broadcast service system and the eventual broadcasting of at least one available for broadcast data files from a service provider system for selective storage within one or more client systems and prior to the broadcasting of at least one of a plurality of upcoming data files by the broadcast service system, as recited by amended Claim 1. Accordingly, Applicant respectfully submits that Claim 1 is patentable over the combination of Seidman in view of Ten Kate and further in view of Ballou.

Regarding Claim 5, Claim 5, based on its dependency from Claim 1, is also patentable over the combination of Seidman in view of Ten Kate and further in view of Ballou. Consequently, Applicant respectfully requests that the Examiner withdraw the §103(a) rejection of Claim 5.

Regarding Claims 10, 31 and 32, Claims 10, 31 and 32 depend from Claims 6 and 28, respectively, which each recite the storage of available for broadcast data files broadcast by a broadcast service system and an upcoming data file broadcast by a service provider system based on a content rating table.

Regarding the Examiner's citing of Ballou, Applicant respectfully submits that the Examiner's citing of Ballou fails to rectify the deficiencies of the combination of Seidman in view of Ten Kate to teach or suggest the above-recited features of Claims 6 and 28. Accordingly, Applicant respectfully submits that Claims 6 and 28 are patentable over the combination of Seidman in view of Ten Kate and further in view of Ballou.

Accordingly, Claims 10, 31 and 32, based on their dependency on Claims 6 and 28, respectively, are also patentable over the combination of Seidman in view of Ten Kate and further in view of Ballou. Consequently, Applicant respectfully requests that the Examiner reconsider and withdraw the § 103 rejection of Claims 10, 31 and 32.

The Examiner has rejected Claim 30 under 35 U.S.C. §103(a) as being unpatentable over Seidman and further in view of U.S. Patent No. 6,490,722 to Barton et al. ("Barton"). Applicant respectfully traverses this rejection.

Regarding the Examiner's citing of Barton, Applicant respectfully submits that the Examiner's citing of Barton fails to rectify the deficiencies of Seidman in failing to teach or suggest the storage of one of an available for broadcast data file broadcast by a broadcast service system and an upcoming data file broadcast by a service provider system, as recited by Claim 28. Accordingly, Applicant respectfully submits that Claim 28, for at least the reasons described above, is patentable over the combination of Seidman in view of Barton.

Accordingly, Claim 30, Claim 30, based on its dependency from Claim 28, is also patentable over the combination of Seidman in view of Barton. Consequently, Applicant respectfully requests the Examiner reconsider and withdraw the § 103 rejection of Claim 30.

The Examiner has rejected Claim 27 under 35 U.S.C. §103(a) as being unpatentable over Seidman and further in view of Ten Kate and U.S. Patent Application No. 2002/0199194 to Ali (“Ali”). Applicant respectfully traverses this rejection.

Regarding the Examiner’s citing of Ali, Applicant respectfully submits that Ali fails to rectify the deficiencies of the combination of Seidman in view of Ten Kate to illustrate the combining of available for broadcast data files from a service provider system along with upcoming data files to be broadcast by a broadcast service system and a selection of at least one available for broadcast according to ratings for selective storage within one of our clients systems and prior to the broadcast by the broadcast service system of the plurality of upcoming data files, as recited by amended Claim 25. Accordingly, Applicant respectfully submits that Claim 25 is patentable over the combination of Seidman in view of Ten Kate and further in view of Ali.

Accordingly, Claim 27, based on its dependency from Claim 25, is also patentable over the combination of Seidman in view of Ten Kate and further in view of Ali. Therefore, Applicant respectfully requests that the Examiner reconsider and withdraw the § 103 rejection of Claim 27.

CONCLUSION

In view of the foregoing, it is submitted that Claims 1-36 patentably define the subject invention over the cited references of record, and are in condition for allowance and such action is earnestly solicited at the earliest possible date. If the Examiner believes a telephone conference would be useful in moving the case forward, he is encouraged to contact the undersigned at (310) 207-3800.

If necessary, the Commissioner is hereby authorized in this, concurrent and future replies, to charge payment or credit any overpayment to Deposit Account No. 02-2666 for any additional fees required under 37 C.F.R. §§1.16 or 1.17, particularly, extension of time fees.

Respectfully submitted,

BLAKELY, SOKOLOFF, TAYLOR, & ZAFMAN LLP

Dated: October 13, 2005

By: _____

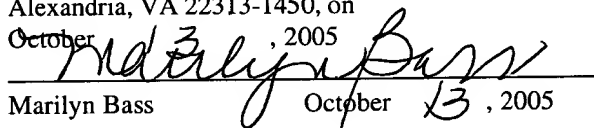

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October 13, 2005


Marilyn Bass

October 13, 2005